REMARKS

Status of this application

The Office Action mailed on September 24, 2008 required that the application be restricted to one of the following groups of claims: Group I, claims 34-62 or Group II, claims 63-82. Applicants provisionally elected Group I, claims 34-62, without traverse, in a telephone call with the Examiner on September 18, 2008. That elected is hereby affirmed. Claims 63-82 were withdrawn by the Examiner and have accordingly been canceled by this response.

Claim 34 was rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,199,076. Applicants have submitted herewith a terminal disclaimer along with documents showing that the present application and Patent 6,199,076 are commonly owned. It is accordingly requested that the double patenting rejection be withdrawn.

The outstanding action rejected the elected claims 34-62 under 35 U.S.C, §103(a) as being directed to subject matter deemed to be obvious in view of Janky U.S. Patent 5,914,941 (hereinafter "Janky") considered in view of Hair U.S. Patent 5,966,440 (hereinafter "Hair").

This response makes numerous amendments to the claims to more particularly point out and distinctly claim the invention and requests reconsideration of the claims as now presented for the reasons stated below.

Summary of the novel features of the invention as claimed

The invention as claimed possesses numerous novel features that are nowhere disclosed or suggested by Janky or Hair, whether considered singly or in combination. These features are briefly summarized below by way of introduction before discussing the specific prior art teachings relied upon by the Examiner in the outstanding "obviousness" rejection.

All of the claims set forth an audio program player that downloads and stores a plurality of audio program files and a sequencing file that specifies an ordered sequence of a collection of the stored audio program files. The claimed player further includes a communications port for downloading the sequencing file and at least some of the audio program files from one or more server computers. The claimed player continuously reproduces the audio programs in the collection for a listener in the order specified by the sequencing file in the absence of a program

selection command from the listener, and responds to a selection command by discontinuing the reproduction of the currently playing program and instead continuing at the beginning of the listener-selected audio file. The downloaded sequencing file thus automates a personalized playback session by reproducing the collection of selected program files in the ordered sequence specified by the sequencing file, and allows the listener to select a different audio program in the specified playback sequence at any time during the automated playback session.

The downloaded sequencing file may be used to implement a variety of other useful features as set forth in the claims. The audio programs included in the collection specified by the downloaded sequencing file may be displayed in a listing shown on a display screen, and the listener may select one of the programs on the displayed listing for reproduction [claims 35-41 and 47-62]. In response to a command from the listener, the player can also skip forward in the sequence by discontinuing the reproduction of the currently playing program and instead continuing the reproduction at the beginning of the next program in the ordered sequence specified by the sequencing file [claims 37-39 and 47-62], skip backward to the beginning of the currently playing program in response to skip back command accepted after the currently playing program has played for at least a predetermined amount of time [claims 38-39 and 47-62], or skip back to the previous program in the ordered sequence if the current program has not played for that predetermined amount of time [claims 39 and 47-62]. The program skip control mechanism permits the programs specified the sequencing file to be skipped from beginning to beginning in either the forward or backward direction in a bidirectional endless loop [claim 40].

For storage and processing efficiency, each audio program may be designated by a unique program identifier and the sequencing file specifies the audio programs in the sequenced collection using those identifiers [claims 41 and 61-62]. The player's memory unit stores program description data records that contain or are designated by the unique program identifier, describe each given program file stored in the memory unit, specify displayable text describing the given audio program file, and specify the storage location of the given audio program file [claims 41 and 62].

The collection of audio program files specified by the downloaded sequencing file is selected by or on behalf of the listener in accordance with preference data or program selections accepted from the listener to define a playback session that is personalized to the preferences of

the listener [claims 42-62]. At least some of the audio programs that are downloaded to the player are selected by or on behalf of the listener from a catalog listing of available audio program files that are selected in accordance with program preference data or program selections accepted from said listener [claims 43-45]. The listener can request and display catalog listings of programs is specified categories, and request and receive programs specified in these subject matter listings for future playback [claim 56]. Programs in the collection specified by the sequencing file may be selected based on preference data indicating subject matter categories of interest to the listener determined by past program selections accepted from said listener [claims 51-59]. Specific audio program files may be selected by the listener by downloading and reviewing one or more HTML program selection forms from a server computer via the Internet, selecting the specific audio program files from the selection forms, and downloading the specific audio program files from a server computer [claim 60].

The displayed listing of programs in the collection specified by the sequencing file indicates which of the listed programs is currently playing [claims 36-39 and 48-59] and further displays the time remaining to be played in the audio program file currently being played [claim 50]. The player also displays selected image data files stored in the memory unit on the display screen concurrently with the reproduction of specified ones of the audio program files in the ordered sequence specified by said playback session sequencing file [claims 49-59].

The processor performs such control functions in response to input commands from the user by executing utility programs, at least some of which are downloaded from one or more server computers and stored in the player's memory unit for execution by the processor [claims 55-57].

Overview of the Janky and Hair Patents

Janky and Hair, whether considered singly or in combination, disclose or suggest none of the features of applicants' invention outlined above.

Janky discloses "a digital replacement for an analog tape recorder" that downloads audio programs from a service, stores them in a hard drive, and plays the stored program material when desired [Janky, col. 5, lines 26-67]. As shown in Fig. 5, when the Select/Play button 82 is actuated, the Janky player displays playback control symbols on the screen 90, including playback 120, pause/bookmark 121, stop 122, fast forward 123, and fast rewind 124 [Janky, col. 12, lines 51-59].

Janky does not describe downloading and receiving a sequencing file that identifies a collection of stored programs and establishes an ordered sequence for playing back those programs nor does Janky disclose or suggest any of the other features of the claimed invention discussed above. Specific teachings of the Janky patent which were noted by the Examiner are discussed later in this response.

Hair also discloses a system that enables a user to purchase and download audio or video programs, and store the received programs for later playback. The user can select a series of individual songs from different albums for sequential playback [Hair, col. 2, lines 59-61]. To play a stored song, the user types in appropriate commands causing the player to retrieve the selected song from the hard disk, sending an output to the speakers. The user may request specific songs to be electronically cued for playback by storing commands in random access memory enabling the control unit to remember prior commands and continuing to play songs previously cued [col. 5, lines 4-28]. A display screen can list/scroll all songs stored on the hard disk, all cued songs, and the current command function selected by the user. Information about each song, including the song's lyrics, the name of the song, album, artist, recording company, date of the recording, duration of the song, etc. can be stored on the hard disk and displayed on the display screen. Like Janky, Hair does not describe downloading and receiving a sequencing file that identifies a collection of stored programs and establishes an ordered sequence for playing back those programs nor does Hair disclose or suggest any of the other features of the claimed invention discussed above. Specific teachings of the Hair patent which were noted by the Examiner are discussed later in this response.

The obviousness rejection based on Janky and Hair

All of the pending claims (claims 34-62) as amended are believed to clearly distinguish over the combined teachings of Janky and Hair for the reasons discussed next.

Neither Janky nor Hair describe an audio program player as set forth in independent claims 34 and 47 (and the remaining dependent claims) that employs a communications port to download from one or more server computers a sequencing file and a plurality of audio program files wherein the downloaded sequencing file specifies an ordered sequence of a collection of the audio program files stored in the player's memory unit. The claimed player continuously reproduces the specified collection of programs for a listener in the order specified by the sequencing file in the absence of a command from the listener, and responds to a selection command accepted from the listener by discontinuing the reproduction of the currently playing program and instead continuing at the beginning of the listener-selected program file. The

downloaded sequencing file thus automates a personalized playback session by reproducing the collection of identified program files in the ordered sequence specified by the sequencing file, and allows the listener to jump to the beginning of a different audio program in that playback sequence at any time during the automated session.

The Examiner acknowledges that Janky does not disclose reproducing audio program files in the order specified by a sequencing file in the absence of a command from a listener, but states that "sequential playback of a plurality of audio files is notoriously well known in the art." Sequential playback is, of course well known. Janky provides "a digital replacement for an analog audio tape recorder" (Janky, col. 6, lines 21-23) which plays audio programming in the sequence recorded. Janky notes, at col. 2, lines 4-7, that "Prerecorded materials must be listened to in the order they were recorded." Janky solves this problem in part by recording a library of materials in the player's memory, and permits any stored program to be selected and then played back as described at col. 12, lines 53-59. Janky permits the user to browse through various hierarchical program categories and through program descriptions in each category by reading descriptions of the categories and program titles as described at col. 10, lines 35 to col. 11, line 24, permitting the user to select and order specific programs to be downloaded. But Janky does not disclose or suggest that a collection of stored programs and the order in which those programs are reproduced for the listener could or should be specified by a sequencing file downloaded from a server computer as claimed.

In rejecting claim 49 (whose limitations have been added to claim 47), the Examiner suggested that, since Janky permits the listener to retrieve files by setting up a "collation configuration," the files retrieved can thus be said to create a "playback session" as individual files are retrieved and played. It should be noted, however, as discussed above, that Janky's configuration setup merely provides a listing of available files which is presented for review by the listener, but this listing does not specify the playback of any file, let alone a playback sequence. Moreover, Janky's mechanism for configuring an automated lookup of available programs does not download and store a file of any kind, let alone a sequencing file as claimed that identifies an ordered sequence of a collection of separate audio program files and a processor for continuously delivering a succession of the program files in that ordered sequence to the audio output unit in the absence of a program selection command from the listener as claimed. This novel arrangement is clearly set forth in independent claims 34 and 47 as amended, as well as in all of the remaining dependent claims, and all

the claims are accordingly believed to be allowable for that reason.

The Examiner notes that Janky, at col. 10, lines 31-34, states "For example, if the user is interested in listening to all regularly published information on a particular topic, the agent can be programmed to collate all such information for the user's review." It is submitted that this teaching, read in light of the remaining disclosure, clearly refers to presenting a catalog description of programs on a particular topic for the user's review by employing the setup mode to "configure the system to follow certain canonical paths through a built-in menu system" as described in the immediately preceding passage at col. 10, lines 21-30. This automated menu processing mechanism does not constitute or create "a sequencing file containing data specifying an ordered sequence of a collection of said separate digital compressed audio program files" nor does it provide a mechanism for "continuously delivering a succession of said audio program files in said collection to said audio output unit in said ordered sequence specified by said sequencing file in the absence of a program selection command from said listener," as the Examiner acknowledges.

The Examiner suggests, however, that it would have been obvious to employ the sequential playback technique taught by Hair to the "collated files" of Janky.

Hair discloses a system that enables a user to purchase and download audio or video programs, and store the received programs for later playback. The user can select a series of individual songs from different albums for sequential playback [Hair, col. 2, lines 59-61] and may request specific songs to be electronically cued for playback by storing commands in random access memory, enabling the control unit to remember prior commands and continuing to play songs previously cued [col. 5, lines 4-28]. But neither Janky nor Hair disclose or suggest downloading a sequencing file via a communications link from one or more server computers where the downloaded sequencing file identifies a collection of stored programs and establishes an ordered sequence for playing back those programs. In Janky and Hair, the stored audio program files, and the sequence in which they are played, are both specified by the user at the time playback selections are made by the listener. Nothing in either reference suggests that specific audio files which are to be played in a playback session could or should be specified by a sequencing file that is downloaded from a remote server via the player's communications port, rather than being selected by the user at the time playback is desired. The claimed mechanism for downloading a sequencing file from a server computer to the player via a communication link that specifies an ordered sequence of individual audio programs for

playback enables a complete listening session to be authored at the server, and then downloaded to the create an automated playback session.

Independent claims 34 and 47 further state that the claimed audio payer continuously reproduces the collection of audio program files specified in the sequencing file in the ordered sequence specified by the sequencing in the absence of a selection command from the listener. In response to a program selection command from the listener, the player discontinues the reproduction of the currently playing program file and instead continues the reproduction at the beginning of a listener-selected one of the program files in the collection specified by the sequencing file. Neither Janky nor Hair discloses such an arrangement. Janky permits an audio program file to be selected and played, and provides conventional tape-recorder-type play, pause, fast forward and rewind control of the playback of a selected audio file, but does disclose any kind of navigation from a current playback position to the beginning of a different program in the playback sequence specified by a sequencing file. Similarly, while Hair discloses the possibility placing a sequence of programs in a playback cue by remembering a series of playback commands from the user, Hair does not describe or suggest any mechanism for discontinuing the playback of the currently playing song and instead continuing the playback at the beginning of a different song in the cue.

Claims 35-41 and 47-62 further specify that the audio programs specified by the downloaded sequencing file are displayed on a display screen, and the listener can select one of the listed songs in the displayed sequence, discontinue the reproduction of the currently playing song in the sequence, and then begin reproducing the sequence at the beginning of the song the listener selects from the list. The Examiner correctly noted that Janky, at col. 10, lines 51-57, describes a display screen that presents a hierarchical listing that includes descriptions of programs that can be ordered. Hair, at col. 5, lines 34-35, states that the video display screen 70 can list all cued songs. But neither Janky nor Hair disclose or suggest displaying a listing of the programs specified in a downloaded sequencing file as claimed, and neither suggests any mechanism for jumping to a different song in that sequence specified a downloaded sequencing file. Claims 35-41 and 47-62 have been amended to clarify this novel aspect of the invention and are believed to be allowable over Janky and Hair for this additional reason.

Claims 36-41 further specifies that the display screen provides a visible indication of the currently playing audio program file in the collection of programs specified by the downloaded

sequencing file and described on the scrollable listing. The Examiner correctly notes that Janky at claim 2 states that Janky player includes "a display for visually indicating current apparatus mode of operation." A review of the disclosure of the Janky patent reveals that various modes of operation are indicated on the display panel 90, but there is no disclosure or suggestion anywhere in Janky that the currently playing program in a sequence specified by a sequencing file is indicated on the Janky display. Reconsideration of the rejection of claims 36-41 is accordingly requested for this additional reason.

Further features of the novel mechanism for jumping to a different program in the sequence specified by the downloaded sequencing file are set forth in claims 37-39 and 47-62 which state that, in response to a command from the listener, the player can skip forward by discontinuing the reproduction of the currently playing program and instead continue the reproduction at the beginning of the next program in the ordered sequence specified by the sequencing file [claims 38-41 and 47-62]. Claims 38-41 and 47-62 further state that the player can skip backward to beginning of the currently playing program in response to skip backward command accepted after the currently playing program has played for at least a predetermined amount of time. Claims 39-41 and 47-62 further state that the player can skip to the previous program in the ordered sequence if the current program has not played for the predetermined amount of time when the skip backward command is accepted. Claims 40-41 further state that this control mechanism permits the sequence of program files specified by the sequencing file can be skipped in a forward or backward direction in an endless bidirectional loop. This novel mechanism for jumping forward and backward in the playback sequence specified by a downloaded sequencing file is nowhere disclosed or suggested in either Janky or Hair. Claims 37-39 and 47-62 as now presented are accordingly believed to be allowable for these additional reasons.

In the outstanding action, the Examiner stated:

"While these skip commands are not explicitly disclosed, Janky does disclose forward and backward commands. Modifying these commands to skip between the plurality of files would have been notoriously well known in the art. The device stores a plurality of files and also has the ability to key forward, key backward, as well as pause, and individually select files using the user input commands. It would be desirable to allow a user to scroll back and forth through the plurality files

via a skip command or to restart the current playback in order to allow a user to have greater freedom in audio file selection."

It is submitted that, since Janky does not disclose or suggest the use of a sequencing file that establishes a playback sequence as claimed, it would not have been obvious to provide a mechanism for skipping forward and backward through such a sequence as the Examiner suggests. While Janky does provide play/pause/fast forward/rewind control, thus emulating a tape player as Janky intends, Janky nowhere suggests the novel control mechanism for navigating forward and backward between the beginnings of programs in a sequence specified by a downloaded sequencing file as claimed. Claims 34 and 47 and all of the remaining dependent claims are accordingly allowable for that additional reason.

Claims 41 and 61-62 set forth further features of the downloaded sequencing file and the manner in which it implements the novel functions of the invention. For storage efficiency, each audio program may be designated by a unique program identifier and the sequencing file specifies the program identifier for each audio program file in the sequenced collection. Claims 41 and 62 further state that player's memory unit stores also program description data records that describe each given program file, and these records contain or are designated by the unique program identifier that designates the given audio program file, specify displayable text describing the given audio program file, and specify the storage location of the given audio program file. This novel data structure permits the sequence file to efficiently identify all of the information needed to display a listing of the programs in the playback sequence, organize those programs into a specified sequence, and retrieve individual programs when needed for playback from their specified storage location. Neither Janky nor Hair describe a downloadable sequencing file at all, let alone describing the use of unique program identifiers in such a sequencing file to provide efficient access keys to designate and access the additional specified data records containing information needed to implement the functions made possible by the downloaded sequencing file.

With respect to claim 40 (which formerly included limitations similar to those now found in claims 41 and 61-62), the Examiner noted that Janky, at col. 12, lines 26-40, states that the transferred files include identification tags. This passage suggests that the tags that are placed in the headers of broadcast program data files and are matched against programs selected by the

user from the catalog and that matching program files are then transferred to the player's hard drive. Thus, while these identification tags may also be stored with the program file in the hard drive, there is no suggestion that they serve any further purpose after being used to identify programs to be captured. Since Janky does not disclose a downloaded sequencing file as claimed, there is no basis for concluding that the Janky discloses or suggests placing unique program identifiers in such a sequencing file. Moreover, while Janky discloses downloading, storing and displaying catalog listings of available programs, the individual records in these catalog listings do not contain or are designated by the program identifiers which specify the programs in the ordered sequence specified by the downloaded sequencing file

The Examiner acknowledges that Janky does not disclose the use of program description records as set forth in claim 41, but suggests that it would have been obvious to provide such records in order to produce program information for the user's review as described by Janky at col. 10. The cited passage states "For example, if the user is interested in listening to all regularly published information on a particular topic, the agent can be programmed to collate all such information for the user's review." As discussed above, this statement refers to presenting a catalog description of programs on a particular topic for the user's review by employing the setup mode to "configure the system to follow certain canonical paths through a built-in menu system." These catalog listings are used to select programs to be transferred to the player using the database catalog browsing mechanism described at col. 11, lines 1-24. As described, these catalog descriptions are downloaded to the player and stored in memory, and permit the user to select programs to be ordered from the catalogs. But these data records are not specified by program identifiers in a downloaded sequencing file as claimed, are not used to create the displayed listings of programs in the ordered sequence specified by the sequencing file, and are not used to store the location of the programs in the collection. Claim 41 has been amended to more clearly define this aspect of the invention and is believed to be allowable for this additional reason.

Claims 42-46 and 47-62 further state that the collection of audio program files specified by the downloaded sequencing file are selected by or on behalf of the listener in accordance with preference data or program selections accepted from the listener. By downloading a sequencing file from a server computer to the player that specifies an ordered sequence of audio programs that are selected in accordance with preference data or programs previously accepted from the

listener, the claimed system is able to define and provide to the listener a personalized, automated listening session. The Examiner notes that Janky discloses a communications port for downloading program files and further suggests that the user can set up a collation configuration for selecting files for a playback session. It is submitted that, while Janky can be used to play selected downloaded files in a playback session, Janky nowhere suggests that files could be or should be played in the order specified by a downloaded sequencing file as claimed. Nothing like this mechanism for defining the content and sequence of a collection of audio program files that provide a personalized playback session is disclosed or suggested by either Janky or Hair, and claims 42-46 and 47-62 are accordingly believed to be allowable for this still further reason.

The Examiner's comments with respect to claims 43-46 are noted. For the purposes of this response, applicants rely on the limitations expressed in parent claims 34 and 42 as amended (discussed above) for the allowability of their dependent claims 43-46.

Claim 49 and its dependent claims 50-59 have been rewritten to state that the memory unit further stores image data files and selected image data files are displayed on the player's display screen concurrently with the reproduction of specified ones of the audio program files in the ordered sequence specified by the downloaded playback session sequencing file. This feature of the invention enables the player to provide a multimedia presentation which combines images reproduced on the display of synchronized with the audio presentation specified by the sequencing file. Neither Janky nor Hair discloses displaying image files concurrently with the presentation of audio files as specified by a sequencing file as claimed. Claims 49-59 are accordingly allowable for this additional reason.

Claim 50 has been rewritten to state that the player displays the time remaining to be played in the audio program file currently being reproduced by a client player in the ordered sequence specified by said playback session sequencing file. This feature helps the listener chose whether or not to skip the remaining portion of a currently playing program and skip to the beginning of the next program in the sequence specified by the downloaded sequencing file. Claim 50 is accordingly allowable for this additional reason.

Claims 51 and its dependent claims 52-59 have been rewritten and made dependent upon claims 47-49. These claims, as now presented, state that one or more of the audio program files in the collection specified by the downloaded playback session scheduling file are selected based on preference data indicating subject matter categories of interest to said listener determined by past

program selections accepted from said listener. These features provides the listener with a predefined automated playback session which contains audio programs that contain subject matter of interest to the listener determined by the listener's past program selections. Neither Janky nor Hair describe the mechanism specified by claim 51 and its dependent claims 52-59, which are believed to be allowable for this additional reason.

In addition claims 55 and 57 states that utility programs are downloaded via said communications port from said one or more server computers and stored in said memory unit for execution by said processor. These downloaded utility programs handle the downloading and display of catalog listings and the selection of audio programs from the displayed program listings, downloading the programs selected from the listings, and downloading and executing the sequencing file which orchestrates each playback session. By downloading the utility programs that manipulate the downloaded sequencing file and the downloaded audio programs to the player, all of the components (software and data) needed to enable the processor to provide a personalized listening experience can be provided from one or more servers. Neither Janky nor Hair suggest that the mechanism in which both the program content, the sequence in which that content is presented, and the software that controls how that sequence can be chosen and altered, is all downloaded from one or more servers to the player as claimed. Claims 55 and 57 are accordingly allowable for this additional reason.

Claim 57 further states that the control functions performed by the processor by executing downloaded utility programs further include adding, deleting or reordering one or more of the audio program files in said collection specified by the downloaded playback session sequencing file. The Examiner suggests that the listener using the Janky system as described at col. 10 can add files, which would add files to be collated. As discussed above, the Janky system presents lists of programs that are available for download, but does provide any mechanism for adding, deleting or reordering the files in the collection of files specified by a downloaded sequencing file as claimed. Just adding more categories to enable the user to review listings that contain more files that are available for download would not add, delete, or reorder files specified in a downloaded sequencing file as claimed. Reconsideration of the rejection of claim 57 is accordingly requested for this additional reason.

Claim 58 has been rewritten to be dependent on claim 51 and further specifies that some

of the audio program files represent episodes in a series of related episodes which are requested as a group by the listener and are thereafter automatically downloaded to the player these episodes become available for download. Neither Janky nor Hair suggest such an arrangement, and claim 58 is accordingly believed to be allowable for this additional reason.

Claims 59 as also been rewritten and made dependent on claim 51. As now presented, claim 59 states that the duration of the scheduled playback session specified by the downloaded playback session sequencing file is determined in part by preferences data accepted from said listener. By varying the amount of content specified by the downloaded sequencing file in accordance with the listener's preference, the playback duration may be automatically matched to the user's available time. Neither Janky nor Hair disclose or suggest this feature, and claim 59 is accordingly believed to be allowable for this still further reason.

amended (discussed above) and further states that the collection of program files specified by the downloaded playback session sequencing file is selected on behalf of the listener in accordance with preferences or past selections accepted from the listener. Neither Janky nor Hair disclose a downloaded sequencing file at all, let alone suggesting that a collection of programs be selected at the server computer in accordance with preferences or past selections accepted from the user and identified in a downloaded file sent to the player to personalize the content of the automated playback session that is defined by that downloaded scheduling file. Dependent claim 58 is accordingly believed to be allowable for this additional reason.

Conclusion

Reconsideration and allowance of claims 34-62 as now presented is requested.

Respectfully submitted,

Dated: October 28, 2008

Charles G. Call, Reg. 20,406

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this *Amendment* is being transmitted by facsimile to the central facsimile number of the U.S. Patent and Trademark Office, (571) 273-8300, on October 28, 2008.

Dated: October 28, 2008 Signature 

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